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21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 **ANTHONY CURRENT,**

24 Plaintiff,

25 v.

26 **WELLS FARGO BANK, N.A.,**

27 Defendant.

28 **Case No.:**

**COMPLAINT FOR DAMAGES
FOR VIOLATION:**

**I. THE TELEPHONE
CONSUMER
PROTECTION ACT, 47
U.S.C. § 227, ET SEQ.;
AND,**

II. NEGLIGENCE

JURY TRIAL DEMANDED

///

Case #

Current v. Wells Fargo Bank, N.A.

INTRODUCTION

1. Plaintiff ANTHONY CURRENT (“Plaintiff”) through Plaintiff’s attorneys, bring this lawsuit to challenge the actions of Defendant WELLS FARGO BANK, N.A. (“Defendant”) with regard to attempts by Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages through Defendant’s negligent and/or willful contact to Plaintiff’s cellular telephones in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”).
2. The Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227 et seq. was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.
4. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

1 5. Congress also specifically found that “the evidence presented to Congress
 2 indicates that automated or prerecorded calls are a nuisance and an invasion of
 3 privacy, regardless of the time of call....” Id. at §§ 12-13. See also, *Mims*, 132
 4 S. Ct. at 744.

5 6. Plaintiff makes these allegations on information and belief, with the exception
 6 of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which
 7 Plaintiff allege on personal knowledge.

8 7. While many violations are described below with specificity, this Complaint
 9 alleges violations of the statutes cited in their entirety.

10 8. Unless otherwise stated, Plaintiff alleges that any violations by Defendant were
 11 knowing and intentional, and that Defendant did not maintain procedures
 12 reasonably adapted to avoid any such violation.

13 9. Unless otherwise indicated, the use of any Defendant’s name in this Complaint
 14 includes all agents, employees, officers, members, directors, heirs, successors,
 15 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
 16 that Defendant named.

17 **JURISDICTION AND VENUE**

18 10. This Court has federal question jurisdiction because this case arises out of
 19 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
 20 132 S. Ct. 740 (2012).

21 11. Venue is proper in the United States District Court for the Northern District of
 22 California pursuant to 28 U.S.C. § 1391 because Defendant is headquartered in
 23 the City and County of San Francisco, California; Defendant is deemed to reside
 24 in any judicial district in which it is subject to personal jurisdiction at the time
 25 the action is commenced; Defendant’s contacts with this District are sufficient
 26 to subject it to personal jurisdiction; and, a substantial part of the events giving
 27 rise to the claims occurred in this District.

28

1 12. This action arises out of Defendant's violations of the Telephone Consumer
2 Protection Act, 47 U.S.C. § 227, et seq. ("TCPA")

3 **PARTIES**

4 13. Plaintiff is a natural person who resides in the State of Iowa, from whom a debt
5 collector sought to collect a consumer debt which was due and owing or alleged
6 to be due and owing from Plaintiff.

7 14. Plaintiff is a "person" as defined by 47 U.S.C. § 153 (10).

8 15. Plaintiff is informed and believes, and thereon alleges, that Defendant is located
9 in the State of California and is a person as defined by 47 U.S.C. § 153 (10).

10 16. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the
11 ordinary course of business, regularly, on behalf of themselves or others,
12 engage in "debt collection" as that term is defined by California Civil Code §
13 1788.2(b), and is therefore a "debt collector" as that term is defined by
14 California Civil Code § 1788.2(c).

15 17. This case involves money, property or their equivalent, due or owing or alleged
16 to be due or owing from a natural person by reason of a consumer credit
17 transaction. As such, this action arises out of a "consumer debt" and "consumer
18 credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

19 **FACTUAL ALLEGATIONS**

20 18. Sometime before 2017, Plaintiff is alleged to have incurred certain financial
21 obligations to Defendant, the original creditor, for Plaintiff's credit card.

22 19. Plaintiff allegedly fell behind in the payments allegedly owed on the alleged
23 debt.

24 20. Thereafter, Defendant repeatedly called Plaintiff on Plaintiff's cellular
25 telephone via an "automatic telephone dialing system" ("ATDS"), as defined
26 by 47 U.S.C. § 227(a)(1), using an "artificial or prerecorded voice" as
27 prohibited by 47 U.S.C. § 227(b)(1)(A).

- 1 21. This ATDS has the capacity to store or produce telephone numbers to be called,
- 2 using a random or sequential number generator.
- 3 22. On information and belief, Plaintiff utilized a predictive dialer to contact
- 4 Plaintiff on Plaintiff's cellular telephone.
- 5 23. Often times, when Plaintiff would answer the calls from Defendant, there would
- 6 often be a silence, sometimes with a click or a beep-tone, before Defendant
- 7 would pick up and start speaking.
- 8 24. Other times, Plaintiff would be greeted by a prerecorded voice rather than a live
- 9 representative.
- 10 25. Each time Plaintiff was able to speak to a live representative, Plaintiff told
- 11 Defendant to stop calling Plaintiff on Plaintiff's cellular telephone.
- 12 26. Plaintiff did not provide express consent to Defendant to receive calls on
- 13 Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 14 27. Even if Plaintiff initially provided consent, Plaintiff revoked any type of prior
- 15 express consent by stating that Plaintiff no longer wished to be contacted by
- 16 phone.
- 17 28. The calls by Defendant to Plaintiff's cell phone continued even after Plaintiff's
- 18 oral revocation.
- 19 29. Plaintiff answered several of the above mentioned autodialed telephone calls
- 20 from Defendant and asked Defendant to stop calling.
- 21 30. Despite this clear and unmistakable request, the calls continued without
- 22 interruption.
- 23 31. Each of these requests terminated any express or implied consent that
- 24 Defendant may have had prior to beginning its campaign of harassment by
- 25 telephone.
- 26 32. These calls were made by Defendant or Defendant's agent, with Defendant's
- 27 permission, knowledge, control, and for Defendant's benefit.
- 28

1 33. As a result, the telephone calls by Defendant, or its agent(s), violated 47 U.S.C.
 2 § 227(b)(1).

3 34. Through Defendant's actions, Plaintiff suffered an invasion of a legally
 4 protected interest in privacy, which is specifically addressed and protected by
 5 the TCPA.

6 35. Plaintiff was personally affected, becoming frustrated and distressed that,
 7 despite telling Defendant to stop calling Plaintiff's cellular phone, Defendant
 8 continued to harass Plaintiff with collection calls using an ATDS.

9 36. The unrelenting, repetitive calls disrupted Plaintiff's daily activities and the
 10 peaceful enjoyment of Plaintiff's personal and professional life, including the
 11 ability to use Plaintiff's phone.

12 37. The calls placed by Defendant to Plaintiff were extremely intrusive, including
 13 Plaintiff's relationships with close family members. Specifically, Plaintiff
 14 began to ignore or send to voicemail many incoming calls from unknown
 15 numbers, out of frustration in dealing with Defendant' unwanted and intrusive
 16 calls. In doing so, Plaintiff missed important communications from friends,
 17 family, and work.

18 **COUNT I**

19 **NEGLIGENT VIOLATIONS OF THE**
 20 **TELEPHONE CONSUMER PROTECTION ACT (TCPA)**

21 **47 U.S.C. 227**

22 38. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
 23 39. The foregoing acts and omissions constitute numerous and multiple violations
 24 of the TCPA, including but not limited to each and every one of the above-cited
 25 provisions of the TCPA, 47 U.S.C. 227 et. seq.

26 40. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
 27 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and
 28 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

COUNT II
KNOWING AND/OR WILLFUL OF THE
TELEPHONE CONSUMER PROTECTION ACT (TCPA)
47 U.S.C. 227

5 41. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

6 42. The foregoing acts and omissions of Defendant constitute numerous and

7 multiple knowing and/or willful violations of the TCPA, including but not

8 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227

9 et seq.

10 43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227

11 et seq., Plaintiff is entitled to treble damages, as provided by statute, up to

12 \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B)

13 and 47 U.S.C. § 227(b)(3)(C).

COUNT III

NEGLIGENCE

16 44. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
17 as though fully stated herein.

18 45. Defendant had a duty of care to Plaintiff to use exercise reasonable skill and
19 care in carrying out account activities. Specifically, Defendant had a duty to act
20 reasonably when collecting an alleged debt from Plaintiff, including the means
21 and methods for contacting Plaintiff.

22 46. Defendant had a duty to use care to not infringe on consumers' privacy rights
23 when collecting on alleged debts and not calling Plaintiff hundreds and/or
24 thousands of times to harass and/or abuse Plaintiff.

25 47. Defendant breached that duty by calling Plaintiff on Plaintiff's cellular
26 telephones a voluminous number of times, as discussed above, and continued
27 to call despite Plaintiff's request that the calls stop.

28 48. Plaintiff was harmed and suffered injury as described above.

1 49. The negligence of Defendant was a substantial and proximate factor in causing
 2 Plaintiff this harm and injury described above.
 3 50. As said conduct was carried out by Defendant in an oppressive, malicious,
 4 despicable, gross and wantonly negligent manner, said conduct demonstrates
 5 Defendant' conscious disregard for the rights and safety of Plaintiff or their
 6 family. As such, Plaintiff is entitled to recover punitive damages from
 7 Defendant in an amount according to proof at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
 10 Plaintiff be awarded damages from Defendant, as follows:

- 11 • Statutory damages of \$500.00 for each negligent violation of the TCPA
 12 pursuant to 47 U.S.C. § 227(b)(3)(B);
- 13 • Statutory damages of \$1,500.00 for each knowing and/or willful
 14 violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
 15 U.S.C. § 227(b)(3)(C).
- 16 • Pursuant to 47 U.S.C § 227(b)(3)(A), injunctive relief prohibiting such
 17 conduct in the future;
- 18 • Special, general, compensatory, and punitive damages pursuant to
 19 Plaintiff's negligence claim; and
- 20 • Any and all other relief that this Court deems just and proper.

21 Pursuant to the seventh amendment to the Constitution of the United States of
 22 America, Plaintiff is entitled to, and demands, a trial by jury.

23
 24 Dated: January 15, 2018

Respectfully submitted,

25
 26 **KAZEROUNI LAW GROUP, APC**

27
 28 By: /s/ Matthew M. Loker
 MATTHEW M. LOKER, ESQ.
 ATTORNEY FOR PLAINTIFF